

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appellant	Pavel Novak
Application No. 10/601,406	Filing Date: June 23, 2003
Title of Application:	System For Controlling Medical Devices
Confirmation No. 7777	Art Unit: 2152
Examiner:	Dailey, Thomas J.

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Reply Brief Under 37 CFR §41.41**

Dear Sir:

Having received the Examiner's Answer, Appellant submits this Reply Brief for the above-captioned application pursuant to 37 C.F.R. §41.41 as follows.

### **Reply to Examiner's Responses**

Appellant has fully set forth its arguments for patentability in its previously filed Appeal Brief. Herein, Applicant briefly addresses the Examiner's Responses to Applicant's arguments, as set forth in the Examiner's Answer.

As discussed in the previously filed Appeal Brief, the entirety of the Examiner's rejections rests on the Examiner's attempt to take Official Notice of the alleged "fact" that it was common knowledge in the art, in the context of medical device control systems, to send command and control information to a first medical device (e.g., an endoscopic camera) over the same connection (e.g., a surgical network) that it sends command and control information to other surgical devices in order to have a common interface to distribute commands of all the devices, but receive data back from the first medical device (e.g., video data from an endoscopic camera) over a second, separate network (e.g., an ancillary network). However, this taking of Official Notice is completely unsupported, and the Examiner's Answer makes even more clear that the Examiner's attempt is completely erroneous.

In his Examiner's Answer, pages 19-20, the Examiner continues to argue that Appellant "has not stated 'why the noticed fact is not considered to be common

knowledge or well-known in the art.” Appellant respectfully disagrees. In the Appeal Brief, Appellant did specifically state why the noticed fact is not considered to be common knowledge. Specifically, Appellant stated: “During the 2002/2003 time frame, surgical devices, such as cameras, were connected to only one type of network, and all communications to/from these devices took place via that one type of network (as evidenced by Bauer itself).” The Examiner is apparently now looking for Appellant to provide some sort of “underpinning rationale,” which is confusing, and goes beyond what is required of Appellant by the MPEP. Appellant respectfully submits that it has stated why the noticed fact is not considered to be common knowledge or well-known in the art, which is what the MPEP requires so that the Examiner can provide evidence to support his/her taking of Official Notice.

Additionally, in his Examiner’s Answer, pages 20-21, the Examiner continues to attempt to characterize the “fact” of which Official Notice is taken as merely secondary evidence, rather than as the principle evidence upon which the rejections are based. This is completely disingenuous. The Examiner does not dispute that the crux of Appellant’s invention, and the distinguishing feature of all claims, is a medical device control system which sends command and control information to a first medical device over the same connection (e.g., a surgical network) that it sends command and control

information to other surgical devices, but receives data back from the first medical device over a second, separate network (e.g., an ancillary network). As this is the main distinguishing feature of the present invention, and as this is the very feature of which the Examiner is apparently attempting to take Official Notice, the Examiner's attempt to take Official Notice is indeed the principal evidence upon which the rejection was based. It is difficult to comprehend how a reference which merely discloses the state of the art, and is completely silent as to the distinguishing feature of all claims (i.e., Bauer et al.), can be considered to be the "primary evidence" upon which the rejection is based.

Lastly, the Examiner has finally attempted to provide some evidentiary support for the "fact" of which he has been trying to take Official Notice, namely U.S. Patent No. 6,067,571 to Igarashi et al. However, rather than Igarashi et al., supporting the Examiner's position, the reference actually directly contradicts it, and instead supports Appellant's position. As discussed above, and in Appellant's Appeal Brief, it has consistently been Appellant's position that at the time the claimed invention was made, to the extent that surgical devices were connected to networks at all, each surgical device was only connected to one network (rather than to a surgical network and an ancillary network). Igarashi et al. actually supports this position.

More specifically, Igarashi et al. explicitly discloses at column 3, lines 12-17, that the camera 1003 is connected to the camera control apparatus 1001 by only one, RS232C, network. The other connection between the camera 1003 and the camera control apparatus 1001 is via a dedicated cable. ("The camera 1003 and the camera control apparatus 1001 are connected to each other via, e.g., an RS232C interface generally used in a personal computer. Note that the video information obtained by the camera 1003 is outputted to the camera control apparatus 1001 via a dedicated cable which is specially provided."). As will be immediately recognized by one skilled in the art, a dedicated, proprietary (i.e., specially provided) direct connection between two components is not a network, and in fact is the antithesis thereof. As such, not only does Igarashi et al. fail to support the Examiner's taking of Official Notice, but is compelling evidence that the Examiner is confused as to what was well-known in the art at the time of the invention, making it even more critical that his taking of Official Notice be disallowed.

For the foregoing reasons, as well as those set forth in Applicant's previously filed Appeal Brief, Applicant respectfully submits that the claimed invention embodied in each of Claims 1-8, 10-29, 31-50, 52-71 and 73-82 is patentable over the cited prior art.

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As such, Applicant respectfully requests that the rejections of each of these Claims be reversed.

Respectfully submitted,

April 14, 2009

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